IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10570 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHBHAI M RABARI - Petitioner(s)

Versus

VIJAYA BANK - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

None for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 03/08/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment

and award passed by the Industrial Tribunal, Nadiad dated 19.5.2003 passed in Reference (ITCN) No.1 of 1998 in dismissing the said reference.

2. The petitioner who was serving as the Daily Rated Peon with the respondent Bank raised the industrial dispute challenging his alleged termination by way of Reference (ITCN) No.1 of 1998 which was referred to the Industrial Tribunal, Nadiad for its adjudication. It was the contention on behalf of the petitioner that he was appointed with aforesaid bank with effect from 12th March, 1993 as Peon on permanent basis after following due procedure and after interview, however, the petitioner was not issued and given any order in writing and all of sudden his services came to be terminated with effect from 1.8.1994 and therefore, it was without following the requirements as provided under Section-25-F of the Industrial Disputes Act and therefore, it was requested to allow the reference by directing the respondent to reinstate the workman in service. The reference was opposed by the respondent bank by submitting written statement interalia contending

that new branch was open at Anand and till regularly selected candidate / peon was appointed, the petitioner was appointed as daily wager workman without following any procedure and selection and as soon as the newly regularly selected candidate was appointed, the petitioner was told not to come on duty. It was further contention on behalf of the respondent that the the petitioner has not completed 240 days in the last preceding year and therefore, there was no question of following procedure under Section-25-F of the Industrial Disputes Act. Accepting the submissions and contentions made on behalf of the respondent bank and considering the evidence on record and after holding that the petitioner has failed to prove that his appointment was after following due procedure and selection and after inviting applications, and that, he was a daily wager workmen in the newly open branch at Anand till the regularly selected candidate is available and on regularly selected candidate being appointed, the petitioner was not called for duty and that the petitioner has not completed 240 days in the last preceding year of his alleged termination, the

Tribunal has dismissed the reference. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Nadiad passed in aforesaid Reference(ITCN) No.1 of 1998, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri Mukesh H. Rathod, learned advocate appearing on behalf of the petitioner has submitted that the petitioner was appointed after due selection and interview process at Anand Branch and it was the continuous work and therefore, considering Section-25-B(1) of the Industrial Disputes Act, before terminating services of the petitioner, procedure required under Section-25-F of the I.D.Act was required to be followed and since not followed, there is breach of Section-25-F and therefore, the Tribunal ought to have allowed the reference by directing the respondent bank to reinstate the petitioner.

4. On appreciation of evidence, the Industrial Tribunal has held that the petitioner has failed to

prove that the appointment of the petitioner was after following the due selection procedure and formalities so required for the purpose and after application are invited. It is not in dispute that the new branch of the respondent bank was open at Anand and till the regularly selected candidate was being appointed, the petitioner was appointed as he was residing in the same town. It is also not in dispute that that the petitioner was appointed as daily rated peon and that newly regularly selected candidate was posted at Anand Branch and the petitioner came to be relieved and / or not called for duty as the regularly selected candidate was available. In absence of any evidence to prove that the appointment of the petitioner was after due selection and interview, it cannot be said that the appointment of the petitioner was after due selection on permanent basis. Appointment in the bank even as Peon is required to be made after due selection and after inviting applications from the public at large from the eligible candidates and conducting the interview as required under the prescribed procedure. Therefore, appointment of the petitioner was

obviously dehors the due procedure and selection. Even otherwise, as come on record it was found that the petitioner had not completed 240 days continuous service in the last preceding year as the daily rated peon. Under the circumstances, when the petitioner has not completed 240 days as daily rated peon in the last preceding year, there was no question of following any procedure as required under Section-25-F of the Industrial Disputes Act. Under the circumstances, the Industrial Tribunal has rightly dismissed the Reference which is not required to be interfered with by this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India.

5. In above view of the matter, there is no substance in the present petition and the same deserves to be rejected and it is dismissed accordingly at the threshold.

[M.R.Shah, J.]

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